

Issued by the
UNITED STATES DISTRICT COURT
 for the Eastern District of Michigan

NATIONAL ABORTION FEDERATION, et al., SUBPOENA IN A CIVIL CASE

Plaintiffs,

V.

CASE NUMBER: 03 Civ. 8895 (RCC) (S.D.N.Y.)

JOHN ASHCROFT,

Defendant.

TO: The University of Michigan Health System attn.: Robert P. Kelch, M.D., Chief Executive Officer
 M7324 Medical Science Building
 1500 E. Medical Center Drive
 Ann Arbor, MI 48109

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

All medical records associated with those medical record numbers to be identified by plaintiff Timothy R.B. Johnson, M.D. in response to the discovery demands served upon him in the above-captioned case. See attachment hereto.

PLACE

Attn.: AUSA William Woodard (313-226-9796)

U.S. Attorney's Office for the Eastern District of MI, 211 W. Fort St., Suite 2001, Detroit, MI 48226

DATE AND TIME

1/21/04 10:00 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

Sheila M. Gowan
 Assistant United States Attorney, Attorney for Defendant

1/5/04

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

AUSA Sheila M. Gowan, 33 Whitcomb Street, 8th Floor, New York, NY 10004 212/637-2697

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse.)

¹ If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person,

except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

JAMES B. COMEY
United States Attorney for the
Southern District of New York
By: SHEILA M. GOWAN (SG: 8201)
SEAN H. LANE (SL: 4898)
JOSEPH A. PANTOJA (JP: 1845)
ELIZABETH WOLSTEIN (EW: 5194)
Assistant United States Attorneys
33 Whitehall Street -- 8th floor
New York, New York 10004

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATIONAL ABORTION FEDERATION; MARK I. :
EVANS, M.D.; CAROLYN WESTHOFF, M.D., M.Sc; :
CASSING HAMMOND, M.D.; MARC HELLER, M.D.; :
TIMOTHY R.B. JOHNSON, M.D.; STEPHEN :
CHASEN, M.D.; GERSON WEISS, M.D., on behalf :
of themselves and their patients, :

Plaintiffs,

- against -

JOHN ASHCROFT, in his capacity as Attorney
General of the United States, along with his officers,
agents, servants, employees, and successors in office,

Defendant.

Government's First Set of
Interrogatories and Requests for
Documents to Plaintiff
Timothy R.B. Johnson, M.D.

03 Civ. 8695 (RCC)

PLEASE TAKE NOTICE THAT, pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure, and Rules 33.3 and 26.3 of this Court, defendant Attorney General John Ashcroft (the "government"), by his attorney, James B. Comey, United States Attorney for the Southern District of New York, hereby requests plaintiff Timothy R.B. Johnson, M.D., to answer under oath the following written interrogatories and requests for documents, separately and fully in writing, within thirty days after the date of service of this Notice. The answers hereto should include all information known up to the date of the verification thereof.

PLEASE TAKE FURTHER NOTICE THAT each interrogatory and each subpart of each interrogatory should be accorded a separate answer. Each answer should first set forth verbatim the interrogatory to which it is responsive. Interrogatories or subparts thereof should not be combined for the purpose of supplying a common answer. The answer to an interrogatory

or a subpart should not be supplied by referring to the answer to another interrogatory or subpart thereof unless the interrogatory or subpart referred to supplies a complete and accurate answer to the interrogatory or subpart being answered.

PLEASE TAKE FURTHER NOTICE THAT these interrogatories and this request for documents are continuing and you should promptly supply by way of supplemental answers any and all additional responsive information or documents that may become known prior to the trial of this action.

DEFINITIONS

A. DOCUMENT: The word "document" has the meaning of "documents" set forth in Rule 34(a) of the Federal Rules of Civil Procedure, and includes writings, drawings, graphs, charts, photographs, computer disks, and any other data compilations from which information can be obtained and/or translated, if necessary, by the respondent through detection devices into reasonably usable form.

B. IDENTIFY: To "identify" a person means to give, to the extent known, the person's full name, present or last known home address and telephone number, and the present or last known address and telephone number of place of employment. To "identify" a document means to give, to the extent known, (a) the type of document; (b) the general subject matter; (c) the date of the document; (d) the author(s), addressee(s) and recipient(s); and (e) if the document is a medical record, the location where the medical record is kept. To identify a firm, partnership, corporation, business trust or other association or a division, department or unit means to give, to the extent known, its full name and principal office address and telephone.

C. ADDITIONAL TERMS: The definitions of "communication," terms referring to parties, "person," "concerning," "all," "each," "and," "or," and other terms contained in Rule 26.3 of the Civil Rules of the United States District Court for the Southern District of New York apply herein.

D. MEDICAL RECORD NUMBER: "Medical record number" means the number assigned to the medical records relating to a particular patient or other identifier sufficient to enable retrieval of the patient's medical records.

INSTRUCTIONS

E. Responses to requests to identify documents and persons shall be in accordance with Rules 26.3(c)(3) and (4) of the Local Rules of the United States District Court for the Southern District of New York.

F. Where duplicate copies of one document exist, these need not be produced unless they contain writings or notes which do not appear on all other copies of that document.

G. If you refuse to identify and/or withhold any document requested herein on the ground of privilege, you must comply with the requirements of Rule 26.2(a)(1) and (2)(A) of the Local Rules of the United States District Court for the Southern District of New York in setting forth the information listed therein with respect to each claim of privilege.

INTERROGATORIES

1. Identify the patient medical record numbers for the abortions that you have performed or supervised within the past three (3) years where the induction method of abortion was considered but rejected by either you or the patient because the method was contraindicated.

2. Identify the patient medical record numbers for the abortions that you have performed or supervised within the past three (3) years using the abortion method intact D&E, also known as intact dilation and extraction or D&X as stated in paragraph 39 of the complaint.

3. Identify the patient medical record numbers for the abortions that you have performed or supervised within the past three (3) years using the abortion method D&E.

4. Identify the patient medical record numbers for the abortions performed or supervised by you during or after the second trimester of a patient's pregnancy, within the year 2003, where a procedure utilizing injection(s) of chemical agent(s) in order to effect intrauterine fetal demise was considered but its use was rejected either by you or by the patient.

5. Identify the patient medical record numbers for the abortions performed or supervised by you within the year 2003 where the fetus had severe hydrocephalus.
6. Identify the number of abortions that were performed at the Department of Obstetrics and Gynecology at the University of Michigan (see complaint at paragraph 13) within the past three (3) years using the abortion method intact D&E, also known as intact dilation and extraction or D&X as stated in paragraph 39 of the complaint.
7. Identify which, if any, of the articles that you have published in peer-reviewed journals concern the abortion method intact D&E, also known as intact dilation and extraction or D&X as stated in paragraph 39 of the complaint.
8. Identify which, if any, of the books that you have authored or co-authored concern the abortion method intact D&E, also known as intact dilation and extraction or D&X as stated in paragraph 39 of the complaint.
9. Identify which, if any, companies or entities or organizations have given you research grants concerning the abortion method intact D&E, also known as intact dilation and extraction or D&X as stated in paragraph 39 of the complaint.
10. Identify the case caption and case number for all legal proceedings in which you have testified concerning the abortion method intact D&E, also known as intact dilation and extraction or D&X as stated in paragraph 39 of the complaint.
11. Identify the case caption and case number for all legal proceedings in which you have submitted declarations and/or affidavits concerning the abortion method intact D&E, also known as intact dilation and extraction or D&X as stated in paragraph 39 of the complaint.
12. Identify the state(s) of residence of all patients for whom you have performed or supervised an abortion within the past five (5) years by the abortion method intact D&E, also known as intact dilation and extraction or D&X as stated in paragraph 39 of the complaint.

13. Identify the state(s) of residence of all patients who have received abortions at the Department of Obstetrics and Gynecology at the University of Michigan within the past five (5) years by the abortion method intact D&E, also known as intact dilation and extraction or D&X as stated in paragraph 39 of the complaint.

DOCUMENT REQUESTS

1. All documents identified in response to any interrogatory set forth herein.
2. The medical records associated with the patient medical record numbers identified in response to interrogatory numbers 1 through 5.
3. All transcripts of your testimony identified in response to interrogatory number 10.
4. All declarations and/or affidavits identified in response to interrogatory number 11.
5. All teaching material that you have prepared concerning the abortion method intact D&E, also known as intact dilation and extraction or D&X as stated in paragraph 39 of the complaint.
- 6.. All teaching material that you have used concerning the abortion method intact D&E, also known as intact dilation and extraction or D&X as stated in paragraph 39 of the complaint.
7. All documents and/or visual depictions used by you to inform or educate your patients (or prospective patients) about the abortion method intact D&E, also known as intact dilation and extraction or D&X as stated in paragraph 39 of the complaint.
8. Examples of all consent forms (blank) used by you for abortions performed by the method intact D&E, also known as intact dilation and extraction or D&X as stated in paragraph 39 of the complaint.
9. All statistics kept by you concerning the type of abortion procedure performed on patients within the past five (5) years.

10. All statistics kept by the Department of Obstetrics and Gynecology at the University of Michigan concerning the type of abortion procedure performed on patients at that University within the past five (5) years.

11. All written material prepared by you concerning the abortion method intact D&E, also known as intact dilation and extraction or D&X as stated in paragraph 39 of the complaint.

12. All documents supporting your statement in paragraph number 13 of your declaration dated February 10, 2000 submitted in the case captioned Mark I. Evans, M.D., et al. v. Jennifer M. Granholm, Attorney General, et al., 00 Civ. 70586 (AJT), that "[a]s compared to disarticulating the fetus, removing it intact reduces the number of times the physician inserts sharp instruments into the uterus, and may have advantages when an intact fetus is indicated for a pathological study to assess the extent, cause, and risk of recurrence of fetal anomalies."

13. All documents supporting your statement in paragraph number 16 of your declaration dated February 10, 2000 submitted in the case captioned Mark I. Evans, M.D., et al. v. Jennifer M. Granholm, Attorney General, et al., 00 Civ. 70586 (AJT), that the induction method of abortion is "contraindicated for women with various medical conditions, such as cardiac ailments or a prior hysterotomy or prior 'classical' (high) cesarean section."

13. All documents supporting your statement in paragraph number 16 of your declaration dated February 10, 2000 submitted in the case captioned Mark I. Evans, M.D., et al. v. Jennifer M. Granholm, Attorney General, et al., 00 Civ. 70586 (AJT), that the induction method of abortion "can also be contraindicated when the fetus has certain anomalies, such as hydrocephalus (fluid-enlarged head) or conjoined twins."

13. All documents supporting your statement in paragraph number 33 of a February 10, 2000 declaration filed in the civil action styled Mark I. Evans, M.D., et al. v.

Jennifer M. Granholm, Attorney General, et al., 00 Civ. 70586 (AJT), that "injections [of potassium chloride into the fetus in utero] would constitute an extra, unnecessary procedure with attendant risks"

Dated: New York, New York
November 27, 2003

Respectfully submitted,

JAMES B. COMEY
United States Attorney for the
Southern District of New York,
Attorney for Defendant

By: Sheila M. Gowan
SHEILA M. GOWAN (SG: 8201)
SEAN H. LANE (SL: 4898)
JOSEPH A. PANTOJA (JP: 1845)
ELIZABETH WOLSTEIN (EW: 5194)
Assistant United States Attorneys
33 Whitehall Street - 8th Floor
New York, New York 10004
Tel. No.: (212) 637-2697

Certificate of Service

I, SHEILA M. GOWAN, Assistant United States Attorney for the Southern District of New York, hereby certify that on the 28th day of November, 2003, I caused the service of a true copy of the foregoing First Set of Interrogatories and Requests for Documents Directed to Plaintiff Timothy R.B. Johnson, M.D., by overnight mail, next business day delivery, upon counsel for plaintiffs addressed as follows:

Susan Talcott Camp, Esq.
Reproductive Freedom Project
American Civil Liberties Union Foundation
125 Broad Street
New York, New York 10004

Dated: New York, New York
November 28, 2003


SHEILA M. GOWAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATIONAL ABORTION FEDERATION; MARK I. :
EVANS, M.D.; CAROLYN WESTHOFF, M.D., M.Sc; :
CASSING HAMMOND, M.D.; MARC HELLER, M.D.; :
TIMOTHY R.B. JOHNSON, M.D.; STEPHEN :
CHASEN, M.D.; GERSON WEISS, M.D., on behalf :
of themselves and their patients, :

Plaintiffs,

03 Civ. 8695 (RCC)

- against -

ORDER

JOHN ASHCROFT, in his capacity as Attorney
General of the United States, along with his officers,
agents, servants, employees, and successors in office,

Defendant.

RICHARD CONWAY CASEY, United States District Court Judge:

In accord with the Health Insurance Portability and Accountability Act of 1996
("HIPAA"), 45 C.F.R. 164.512(e)(1)(i), non-party witness the University of Michigan Health
System is authorized to disclose to the Defendant the medical records and information sought in
the attached subpoena to be served on the University of Michigan Health System by the
Defendant pursuant to Rule 45 of the Federal Rules of Civil Procedure.

Any application regarding this subpoena must comply with Federal Rule of Civil
Procedure 45(c) and (d).

So Ordered: New York, New York
December 31, 2003


Richard Conway Casey, U.S.D.J.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X
NATIONAL ABORTION FEDERATION; MARK I. :
EVANS, M.D.; CAROLYN WESTHOFF, M.D., M.Sc; :
CASSING HAMMOND, M.D.; MARC HELLER, M.D.; :
TIMOTHY R.B. JOHNSON, M.D.; STEPHEN :
CHASEN, M.D.; GERSON WEISS, M.D., on behalf :
of themselves and their patients, :
:
Plaintiffs, : 03 Civ. 8695 (RCC)
:
- against - :
:
JOHN ASHCROFT, in his capacity as Attorney :
General of the United States, along with his officers, :
agents, servants, employees, and successors in office, :
:
Defendant. :
-----X

AGREED PROTECTIVE ORDER

In order to facilitate discovery in the above-captioned action ("NAF") and to protect the confidentiality of individuals seeking medical services, and in accordance with the terms and conditions of 45 C.F.R. § 164.512(e),

IT IS HEREBY ORDERED, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court's inherent authority, and with the consent of the parties to this action, that:

-----X
1. As used in this Order, the term "Confidential Health Information" means, without regard to whether the material has been designated "Confidential Health Information," any information supplied in any form through discovery in this action that relates to the past, present or future mental or physical health condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, whether or not information has been redacted, pursuant to paragraph 3, to delete

identifying information. Confidential Health Information shall not include information that has voluntarily been made public by the individual who is the subject of the information.

2. The term "Documents," as used in this Order, is synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a), and shall include, without limitation, all writings, drawings, graphs, charts, photographs, phonorecords, data compilations from which information can be obtained or translated, and any other recorded (including electronically recorded) or graphic matter whatsoever.

3. In an effort to protect the interests of individuals with respect to Confidential Health Information and to reduce the risk of disclosure of Confidential Health Information that may identify a specific patient, any party or third party responding to any discovery request may redact from any production or other release of Confidential Health Information any information that the producing entity in good faith believes could be used, either alone or in combination with other information, to identify a specific patient. Information that may be redacted includes, but is not limited to, the patient's name; the name of any spouse, partner, child, and emergency contact (collectively "patient relatives"); the birth date, social security number, address, telephone number, fax number, and e-mail address of the patient and any patient relative; the patient and any patient relative's employer's name, address, telephone number, fax number, and e-mail address; the patient and any patient relative's insurance policy number or group number, and any medical record or chart number. If such identifying information is not redacted by the producing entity, before any party uses or discloses the Confidential Health Information, including disclosures pursuant to paragraphs 7 and 9(b)-(f), that party shall first notify the producing entity about the failure to redact and give the producing entity a reasonable opportunity to provide a redacted copy for use and disclosure. Upon provision of the redacted

copy of the Document(s), the receiving party shall return all non-redacted copies of the Document(s) to the producing entity.

4. No party may use any Confidential Health Information received in the course of this litigation to attempt to identify or contact any specific individual who has sought or obtained medical treatment.

5. Any Documents or information produced in response to any subpoena, discovery request, deposition question, or other lawful process in this action containing Confidential Health Information shall be treated in accordance with this Order whether or not the Document or information has been designated by the producing entity as Confidential Health Information.

6. Notwithstanding the foregoing, any entity producing any Documents or information containing Confidential Health Information may stamp or designate as "Confidential" any Document, or any portion thereof, that contains or reflects Confidential Health Information. Documents so designated are referred to herein as "Confidential Documents." The failure to designate any Document or information as Confidential shall not constitute a waiver of a producing entity's assertion that the materials are covered by this Order. A party who receives Documents or information containing Confidential Health Information that has not been so designated shall, within 10 days of the discovery of the omission, notify the producing entity of the omission.

7. The parties may use or disclose Confidential Health Information and Confidential Documents produced in the course of the proceedings herein, and any information derived therefrom, including, but not limited to, extracts, summaries, memoranda, and correspondence quoting or containing Confidential Health Information solely for the purpose of the prosecution or defense of this action. In addition, upon the entry of a protective order similar in scope and

constraint in *Carhart v. Ashcroft*, No. 4:03CV3385 (D. Neb.) ("*Carhart*") and *Planned Parenthood v. Ashcroft*, No. C 034872 (PJH) (N.D. Cal.) ("*Planned Parenthood*"), Confidential Health Information may be disclosed to counsel for the parties in those actions, provided that such persons have read and signed an acknowledgment, in the form attached hereto as Appendix A, attesting to the fact that they have read this Order and agree to be bound by its terms.

8. The parties shall not allow any person to have access to Confidential Health Information, nor shall any person be informed of the substance of Confidential Health Information, except as otherwise provided in this Order or by further order of the Court.

9. The parties shall not disclose or distribute Confidential Health Information to any person or entity in this action other than the following:

- (a) the parties to this action, as well as the attorneys for the parties (including their paralegals, clerical and other assistants) who have a clear need for access to Confidential Health Information in connection with this action;
- (b) outside contractors and their employees hired to copy, image, index, sort, or otherwise manage the storage and retrieval of case materials;
- (c) persons serving as expert witnesses or otherwise providing advice to counsel in connection with this action;
- (d) not used
- (e) stenographers engaged to transcribe depositions conducted in this action; and
- (f) the Court and its support personnel.

10. The parties shall not disclose Confidential Health Information to any persons described under paragraph 9(a)-(e) of this Order unless counsel first informs such persons that the material to be disclosed is confidential and subject to a Protective Order, and cannot be

disclosed except as permitted by this Order. The parties shall not disclose Confidential Health Information to any persons pursuant to subparagraphs (b), (c), or (e) unless and until such persons have read and signed an acknowledgment, in the form attached hereto as Appendix A, attesting to the fact that they have read this Order and agree to be bound by its terms.

11. During any deposition noticed in connection with this case, a witness or any counsel may indicate on the record that a question calls for Confidential Health Information, or that an answer has disclosed Confidential Health Information. Such Confidential Health Information may be so designated either:

(a) during the deposition, in which case the transcript of the designated testimony shall be bound in a separate volume and marked "Confidential Information Subject to a Protective Order"; or

(b) after the deposition, by written notice to the reporter and to all counsel of record, in which case the reporter and all counsel receiving notice of the designation shall be responsible for marking the copies of the transcript in their possession or under their control as directed by the designating party, and for directing any person to whom they have provided a copy of the transcript to do the same.

(c) The failure of any entity to designate any information as Confidential Health Information does not constitute a waiver of the entity's assertion that the information is covered by this Order.

When a designation is made during a deposition, upon the request of counsel, all persons, except persons entitled to receive the Confidential Health Information, shall leave the room where the

deposition is proceeding until completion of the answer or answers containing Confidential Health Information.

12. All Confidential Health Information that is filed with the Court, and any pleadings, motions, exhibits, or other papers filed with the Court disclosing Confidential Health Information, shall be filed under seal and kept under seal until further order of the Court.

13. The procedures for use of Confidential Health Information and Confidential Documents during any hearing or the trial of this matter shall be determined by the parties and/or the Court in advance of the hearing or trial. No party shall disclose Confidential Health Information or Confidential Documents in open Court without prior approval by the Court.

14. This Order shall not preclude any party from contesting the validity or propriety of any claim of confidentiality asserted hereunder by a producing entity. If a disagreement among the producing entity and/or the parties regarding the appropriate designation of Documents or information as Confidential Health Information cannot be resolved, then the dispute may be presented to the Court for resolution by motion or otherwise. Pending a resolution of the dispute, the Document or information shall continue to be treated as Confidential Health Information subject to the provisions of this Order.

15. Nothing in this Order shall prevent or in any way limit or impair the right of a party to file a motion to unseal any portions of the record for purposes of this litigation. The designated Document or information shall continue to be treated as Confidential Health Information subject to the provisions of this Order pending a ruling by the Court.

16. Within sixty (60) days of the resolution of this action by settlement or final judgment, and the termination of any appeal therefrom, the parties shall destroy or return to the producing entity all Confidential Documents, and any copies thereof that remain in their possession or

control, provided, however, that government counsel may retain one copy of any Confidential Documents whose retention counsel determines, reasonably and in good faith, is necessary or appropriate for compliance with the Federal Records Act, 44 U.S.C. § 3101, and its implementing regulations, 36 C.F.R. § 1222.38. Any such retained materials shall be placed in an envelope or envelopes marked "Confidential Information Subject to Protective Order," and to which shall be attached a copy of this Order. Within sixty (60) days of the resolution of this action by settlement or final judgment, and the termination of any appeal therefrom, government counsel shall notify in writing the producing entity of any Confidential Documents that government counsel intends to retain, and the statutory or regulatory grounds therefore. Plaintiffs and any producing entity retain the right to object to the government's retention of such Confidential Documents.

17. The parties shall also make a good faith attempt to ensure compliance with the foregoing provision by all other persons, except the Court, to whom the party provided copies of Confidential Documents. Upon the request of the entity that provided the Confidential Documents, all counsel of record who received such Documents shall certify compliance with this paragraph and paragraph 16 and shall deliver the same to the entity who provided the Confidential Documents within eighty (80) days of the resolution of this action.

18. Nothing in this Order shall prevent any party from seeking a modification of, or appropriate relief from, any provision herein. Nor does anything in this Order prevent any party or other entity from seeking further protection for Confidential Health Information.

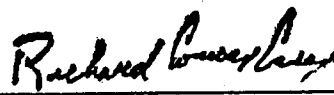
19. This Order does not constitute a ruling on the question of whether any particular material is properly discoverable or admissible, and does not constitute a ruling on any potential objection to the discoverability or admissibility of any Documents or information.

20. The termination of this litigation shall not relieve any person or party provided Confidential Health Information of his, her or its obligations under this Order.

21. If a third-party subpoenas or another court or administrative agency subpoenas or orders production of Confidential Health Information that a party or third party has obtained under the terms of this Order, such party or third party shall, if there are fewer than ten (10) business days to comply, within two (2) days, or, if there are more than ten (10) business days to comply, at least seven (7) business days prior to the due date of compliance, notify the party or third-party that produced the Confidential Health Information of the pendency of the subpoena, public records request, or order in writing.

SO ORDERED.

Dated: 1/23/04


Richard Conway Casey
United States District Judge

ACKNOWLEDGMENT

The undersigned hereby acknowledges that he/she has read the Agreed Protective Order entered in the United States District Court for the Southern District of New York in the case captioned National Abortion Federation v. Ashcroft, 03 Civ. 8695 (RCC), understands its terms, and agrees to be bound by each of those terms. Specifically, and without limitation, the undersigned agrees not to use or disclose any Confidential Documents or Confidential Health Information made available to him/her other than in strict compliance with the Order. The undersigned acknowledges that his/her duties under the Order shall survive the termination of this case, and that failure to comply with the terms of the Order may result in the imposition of sanctions by the Court.

DATED: _____

BY: _____
(type or print name)

SIGNED: _____
